

Federal Communications Commission

DA 03-366

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b).)	
Table of Allotments.)	
FM Broadcast Stations.)	
(Elkhart, Kansas)	)	MB Docket No. 02-15X
	)	RM-10383
)	
(Austin, Nevada)	)	MB Docket No. 02-159
	)	RM- 10471
)	
(Baker, Nevada)	)	MB Docker No. 02-160
	)	RM-10472
)	
(Battle Mountain, Nevada)	)	MB Docket No. 02-161
	)	RM-10473
)	
(Eureka, Nevada)	)	MB Docket No. 02-162 ✓
	)	RM-10474
)	
(Fallon, Nevada)	)	MB Docket No. 02-163
	)	RM-10475
)	
(Moah, Utah)	)	MB Docket No. 02-165
	)	RM- 10477
)	

**REPORT AND ORDER
(Proceedings Terminated)**

Adopted: February 5, 2003

Released: February 7, 2003

By the Assistant Chief, Audio Division:

I. The Audio Division has before it Notices of Proposed Rule Making,¹ setting forth seven separate proposals to allot FM channels to specific communities. Petitioner, Sierra Grande Broadcasting, failed to

¹*Elkhart, Kansas, et al.*, 17 FCC Rcd 12824 (2002).

timely file comments reaffirming its intention to apply for six of these specified channels, if allotted, and filed a motion to withdraw its other proposal.'

2. A showing of continuing interest is required before a channel will be allotted. It is the Commission's policy to refrain from making an allotment to a community absent an expression of interest. Therefore, will dismiss the following petitions:

A. MB Docket No. 02-158; RM-10383

Action: IT IS ORDERED, That the petition for rule making filed by Sierra Grande Broadcasting on October 9, 2001, proposing the allotment of Channel 263C1 at Elkhart, Kansas, IS DISMISSED.

FCC Contact: Sharon P. McDonald (202) 418-2180

B. MB Docket No. 02-159; RM-10471

Action: IT IS ORDERED, That the petition for rule making tiled hy Sierra Grande Broadcasting on October 9, 2001, proposing the allotment of Channel 227C at Austin, Nevada, IS DISMISSED.'

FCC Contact: Sharon P. McDonald (202) 418-2180

C. MB Docket No. 02-160; RM-10472

Action: IT IS ORDERED, That at the request of Sierra Grande Broadcasting, the petition for rule making

² On January 15, 2003, five months after the comment date, Petitioner filed continuing expressions of interest for the six proposals, unaccompanied by a motion to accept. The Commission's Rules do not contemplate the filing of pleadings beyond the comment and reply comment periods in rulemaking proceedings "unless specifically requested or authorized by the Commission." See Section 1.415(d) of the Commission's Rules. In addition, paragraph 2 of the Appendix to the Notice of Proposed Rule Making for all seven of these proceedings clearly states that a rulemaking petitioner is expected to file a continuing expression of interest by the initial comment date. Since the Petitioner's comments were not accompanied by a request for late acceptance and did not contain an explanation for filing after the entire pleading cycle ended, we will not accept its late-filed expressions of interest.

³ REC Networks ("REC") filed comments in support of the allotment of Channel 277C at Austin, Nevada, Channel 231C at Battle Mountain, Channel 300C at Eureka, Nevada, and Channel 297C at Fallon, Nevada. REC also stated that it represents the interest of independently owned Low Power FM broadcasting stations and their listeners. After reviewing the aforementioned proposals, REC found that they do not impact on the future of local radio in REC's areas of interest. While REC urged that the allotments be granted, it did not state an interest in applying for the channels, if allotted. Consequently, we conclude that no valid expressions of interest have been expressed by REC for the channels.

filed on October 9, 2001, proposing the allotment of Channel 296C at Baker, Nevada. **IS DISMISSED.**"

FCC Contact: Sharon P. McDonald (202) 418-2180

D. MB Docket No. 02-161; RM 10473

Action: IT **IS** ORDERED. That the petition for rule making filed by Sierra Grande Broadcasting on October 9, 2001, proposing the allotment of Channel 231C at Battle Mountain, **IS DISMISSED.**⁵

FCC Contact: Sharon P. McDonald (202) 418-2180

E. MB Docket No. 02-162; RM-10474

Action: IT **IS** ORDERED, That the petition for rule making filed by Sierra Grande Broadcasting on October 9, 2001, proposing the allotment of Channel 300C at Eureka, Nevada, **IS DISMISSED.**⁶

FCC Contact: Sharon P. McDonald (202) 418-2180

F. MB Docket No. 02-163; RM-10475

Action: IT **IS** ORDERED. That the petition for rule making filed by Sierra Grande Broadcasting on October 9, 2001, proposing the allotment of Channel 297C at Fallon, Nevada, **IS DISMISSED.**⁷

FCC Contact: Sharon P. McDonald (202) 418-2180

⁴ On October 17, 2002, Sierra Grande Broadcasting filed a motion to withdraw its petition. In accordance with Section 1.420(j) of the Commission's Rules, Petitioner states that it has not received any consideration in exchange for its withdrawal.

REC Networks also filed opposing comments in response to the *Notice* and an errata stating that Channel 296C should not be allotted to Baker due to possible obstructions between the transmitter site and the community. REC also questioned Baker's community status for allotment purposes. Moreover, REC stated that it had no plans to apply for the channel, if allotted. Since the petition is being dismissed, REC's opposition is moot.

⁵ See note 2, *supra*.

⁶ See note 2, *supra*.

See note 2, *supra*.

G. MB Docket No. 02-165; RM-10477

Action: IT IS ORDERED. That the petition for rule making filed by Sierra Grande Broadcasting on October 9, 2001. proposing the allotment of Channel Moab. Utah, IS DISMISSED.

FCC Contact: Sharon P. McDonald (202) 418-2180

3. IT IS FURTHER ORDERED, That the aforementioned proceedings **ARE TERMINATED.**

4. For further information concerning a specific docket, contact the FCC Contact listed above for that docket.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media **Bureau**